

This letter discusses whether combustion gas turbines and related materials can qualify as building materials for purposes of the enterprise zone building materials exemption from sales tax. See 86 Ill. Adm. Code 130.1951. (This is a PLR).

October 19, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of September 6, 2000 and your supplemental letter of October 13, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to request a Private Letter Ruling (hereafter 'PLR') pursuant to 2 Ill. Admin. Code 1200.110, as adopted at 17 Ill. Reg. 7054, effective May 3, 1993. As you know from our General Information Letters dated May 31, 2000 and July 31, 2000 and our previous discussions, our client, COMPANY (hereafter 'Company'), requests a ruling on qualified building materials which will be incorporated into real estate located in an enterprise zone by remodeling, rehabilitation, or new construction.

General Information

1. Enclosed please find an original Form IL-2848, Power of Attorney, authorizing REPRESENTATIVE (hereafter 'Representative') to represent Company before the Illinois Department of Revenue (hereafter 'Department').
2. This PLR is not requested with regard to alternative proposed transactions or hypothetical situations. This PLR is requested to determine the Retailers' Occupation Tax consequences of the actual business practices of Company.
3. This PLR does not relate to issues involved in current returns by Company or relate to an audit by Company.
4. The Department has not previously ruled on this matter for Company.
5. Company requests that certain information be deleted from this PLR prior to public dissemination. Company requests that its name, address, location of its facility and the name of Representative be deleted.
6. Company does not know of any contrary authority.

Statement of Facts

Company has contracted to purchase two new Combustion Gas Turbines and Generators (hereafter collectively 'CTGs') for its building project in the NAME Enterprise Zone, an Illinois enterprise zone (hereafter, 'the enterprise zone'). Each turbine weighs 199,000 pounds (99.5 tons). Each generator weighs 214,000 pounds (107 tons).

Company has contracted with VENDOR (hereafter 'Vendor') for the purchase of the CTGs and related materials. Vendor is located within the enterprise zone.

The CTGs are designed for the location in which they will operate. For example, the CTGs have been engineered to account for seismic requirements, temperature range, humidity range, wind loads, and air quality.

At Company's building project site, the real estate has been excavated for new foundations, aboveground and underground conduits, piping for both water and natural gas, cabling, grounding grid, and new roads. New concrete and steel will be used to build the foundation in the real estate. The preparation of the site and the construction of the foundations took almost one year.

Each CTG, at a combined weight of 413,000 pounds (206.5 tons), will be bolted to their new housing using specially-designed anchor bolts and then connected to the new power electric system. The housing is a building constructed on the concrete and steel foundations, described above. The power electric connection will be made using the new interconnecting conduits, wiring, and cable tray. The gas and water pipes will be attached to concrete foundations and integrated into the facility using permanent connections. In other words, the CTGs will be anchored to the building and connected to the electric system.

The following is a list of the significant materials for which Company has contracted with Vendor:

- Two Combustion Gas Turbines and Generators.
- Electrical equipment, including transformers, aboveground and underground electrical conduit, cabling, and wiring.
- Piping for both water and natural gas.
- Grounding grid.
- Anchor bolts.
- Concrete and steel for the foundations and housing.
- Stacks.
- Inlet fogging system.
- Accessory base.

The materials listed above will be referred to herein as 'the CTGs and related materials.'

Ruling Requested

The issue in this PLR is whether the CTGs and related materials qualify as building materials for incorporation into real estate in an enterprise zone by remodeling, rehabilitation, or new construction under 86 Ill.Admin.Code 130.1951.

Analysis and Authority

The Illinois Retailers' Occupation Tax Act imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2. In accordance with the Act, the tax is measured by a seller's gross receipts. 35 ILCS 120/2-10. A retailer whose place of business is located within a county or municipality which has established an enterprise zone, and who makes sales of building materials to be incorporated into real estate in that enterprise zone by remodeling, rehabilitation or new construction, may deduct receipts from such sales in the calculation of taxable gross receipts. 35 ILCS 120/5k.

Under the applicable regulation, 'in order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate.' 86 Ill.Admin.Code 130.1951(a)(7).

The regulations provides examples of qualifying building materials:

- Common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(A).
- Plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(B).
- Electrical systems and components thereof such as wiring, outlets and light fixtures which are physically incorporated into the real estate can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(D).
- Built-in appliances such as refrigerators, stoves, ovens and trash compactors which are physically incorporated into the real estate can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(G).

As stated above, Company has contracted with Vendor for the purchase of the CTGs and related materials and Vendor is located within the enterprise zone. The issue in this PLR is whether the CTGs and related materials qualify as building materials.

First, under the regulation, the concrete and steel for the foundations and housing, as well as the anchor bolts and grounding gird, should qualify as building materials. 86 Ill.Admin.Code 130.1951(a)(7)(A). In addition, the accessory base and stacks should qualify as building materials. Id.

Second, under the regulation, electrical systems and equipment, including transformers, aboveground and underground electrical conduit, cabling, wiring, and the inlet fogging system should qualify as building materials. 86 Ill.Admin.Code 130.1951(a)(7)(D).

Third, under the regulation, the piping for both water and natural gas should qualify as building materials. 86 Ill.Admin.Code 130.1951(a)(7)(B).

Fourth, under the regulation, the CTGs should qualify as building materials. Like the appliances described in 86 Ill.Admin.Code 130.1951(a)(7)(G), the CTGs will be physically incorporated into real estate because they become part of a component of a building's electrical system. The CTGs will be anchored with bolts to the housing and along with the related materials will then become part of the complex's power electric system. From this perspective, the CTGs are like free-standing appliances, such as stoves, that become part of a component of a building's electrical system. Accordingly, the CTGs should qualify as non-taxable building materials under the regulation.

In addition, four important facts demonstrate that the CTGs and related materials will be physically incorporated into real estate.

1. The CTGs location, which requires specific seismic and atmospheric modifications to the CTGs, foundation, and housing.
2. The preparation and construction of the site, including the concrete and steel foundations, required almost one year to complete.
3. The anchoring of the CTGs to the housing and foundation using specially designed anchor bolts.
4. The immense weight of the CTGs—each CTG weighs a combined 413,000 pounds, or 206.5 tons.

These facts show that the CTGs are indeed heavy appliances are not intended to move from place to place. Rather, they will be physically incorporated into real estate in an enterprise zone. Thus, the CTGs and related materials should qualify as non-taxable building materials for incorporation into real estate in an enterprise zone.

In a recent Private Letter Ruling for another taxpayer with facts substantially similar to Company's (described above), the Department ruled that the taxpayer's natural gas fired turbines, generators, and related materials qualify as building materials. See ST 00-0013-PLR, July 7, 2000.

We respectfully request that the Department issue a ruling stating that the CTGs and related materials qualify as building materials for purposes of the deduction provided in 35 ILCS 120/5k.

Thank you in advance for your prompt attention to this matter. Please feel free to call ##### if you have any questions or need any additional information.

Your supplemental letter of October 13, 2000 stated as follows:

In accordance with your request, the purpose of this letter is to provide you with brief descriptions about the following materials: stacks, inlet fogging system, and accessory base.

- **Stacks.** The stacks are the exhaust stacks that make up part of the overall exhaust system. The stacks are bolted to the concrete foundation and grouted.
- **Inlet fogging system.** The inlet fogging system is the integrated cooling system that connects to the turbines and generators. The inlet fogging system is bolted to the concrete foundation and grouted.
- **Accessory base.** The accessory base is a steel structure that bolts directly to the concrete foundation and is grouted to ensure uniform bearing of load.

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. Section 130.1951(a) states, in part, as follows:

- 7) In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate. For example, gross receipts from sales of:
 - A) common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the deduction;
 - B) plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the deduction;
 - C) heating systems and components thereof such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators can qualify for the deduction;
 - D) electrical systems and components thereof such as wiring, outlets and light fixtures which are physically incorporated into the real estate can qualify for the deduction;
 - E) central air conditioning systems, ventilation systems and components thereof which are physically incorporated into the real estate can qualify for the deduction;

- F) built-in cabinets and other woodwork which are physically incorporated into the real estate can qualify for the deduction;
- G) built-in appliances such as refrigerators, stoves, ovens and trash compactors which are physically incorporated into the real estate can qualify for the deduction;
- H) floor coverings such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips") can qualify for the deduction.

The materials in question include:

- Two Combustion Gas Turbines and Generators
- Electrical equipment, including transformers, aboveground and underground electrical conduit, cabling, and wiring
- Piping for both water and natural gas
- Grounding gird
- Anchor bolts
- Concrete and steel for the foundations and housing
- Stacks
- Inlet fogging system
- Accessory base

You have indicated that all of these materials are being purchased from a retailer located in the NAME Enterprise Zone for incorporation into real estate in the enterprise zone. Based upon the information provided, it is the Department's position that these materials qualify as building materials for purposes of the Enterprise Zone building materials exemption from sales tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel